IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision Nos. 122 and 123 of 1994

Date f decision : July 25, 2007

The Bakhlaur Coop. Agri. Service Society Limited

... Petitioner

versus

Mangal Ram and others

... Respondents

Coram: Hon'ble Mr. Justice A.N. Jindal

Present: Mr. Rajinder Sharma, Advocate
for the petitioner.

Mr. Sandeep Vermani, Advocate
for the respondents No.1 and 2.

Mr. Anter Singh Brar, DAG, Punjab.

A.N. Jindal, J.

These Criminal Revisions Nos. 122 and 123 of 1994 filed by the Co-operative Agricultural Service Society Limited, Bakhlaur (hereinafter referred to as 'the Society') are against the judgment dated 30.9.1993 passed by the Sub Divisional Judicial Magistrate, Nawanshahar, acquitting the accused-respondents Mangal Ram, Subhash Chander and Dharam Pal Singh (hereinafter referred to as 'the respondents').

Dharam Pal Singh respondent had died during the pendency of the revision petition against him.

In nutshell, the allegations are that Subhash Chander and Mangal Ram were working as Secretary and Cashier respectively of the aforesaid Society. In between 1.1.1984 to 31.12.1984, the petitioners

embezzled a sum of Rs.1,87,000/- by making bogus entries in the records of the Society. Sampuran Singh Inspector audited the accounts and reported that Subhash Chander and Mangal Ram respondents made bogus and fictitious entries in the record to the tune of Rs.1,57,000/- for depositing the aforesaid amount in the account of the different members, but actually these members did not deposit or withdraw the amount from their respective accounts, as such, they misappropriated the aforesaid amount. In addition to this, the account books prepared by the accused revealed that a sum of Rs.30,000/- which was allegedly shown to have been given to Dharam Pal (since deceased) as advance for purchasing the fertilizers on 8.10.1982. This amount of Rs.30,000/- had been shown advance from the cash in hand of the society. Some additions and alterations had been made at page No.38 of the Proceeding Book dated 7.10.1982 and 15.10.1982. Thereafter, Dharam Pal issued receipt for payment of Rs.30,000/- as an advance for purchasing of the fertilizers and essential commodities. Dharam Pal is alleged to have signed the said receipt in token of having received the amount of Rs.30,000/-. As such, this amount was embezzled. On registration of the FIR, investigation commenced and completion of investigation was followed by the report under Section 173 Cr.P.C.

The trial ended in acquittal.

The respondents are alleged to have falsified the account books with an intent to defraud the creditors, but neither the account books have been brought on record, nor the creditors have been examined. Mere suspicion could not take place of proof. Some authentic evidence is required to bring home the charge. Mr. Rajinder Sharma, learned counsel for the petitioner has very fairly conceded that from the record no evidence worth the name has been found, which could be treated as sufficient to

establish the charge against the respondents.

Even otherwise, the High Court while setting aside the order of acquittal passed by the trial Court has very limited powers.

The legal question regarding interference with the order of acquittal is no longer res integra, as the law in this regard is very well settled. Suffice it to refer in this regard a decision of this Court in ***K.Chinnaswamy Reddy vs. State of Andhra Pradesh and another, AIR 1962 SC 1788*** wherein it was held as under :-

> *"It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside the finding of acquittal in revision and it is only in exceptional cases that this power should be exercised .....*
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> *Where the appeal Court wrongly ruled out evidence which was admissible, the High Court would not be justified in interfering with the order of acquittal in revision, so that the evidence may be reappraised after taking into account the evidence which was wrongly ruled out as inadmissible. But the High Court should confine itself only to the admissibility of the evidence and should not go further and appraise the evidence also."*

The High Court in its revisional powers does not ordinarily

interfere with the judgments of acquittal unless there has been manifest error of law or procedure. The interference is limited only to exceptional cases when it found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it found that the trial Court has no jurisdiction to try the case or where the trial Court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue have been overlooked. The High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction.

Having examined the instant case on the anvil of the principles laid down by the Apex Court in ***K. Chinnaswamy Reddy's*** case (supra), I do not find any such illegality in the impugned judgment so as to interfere with the same.

Consequently, both the petitions, being devoid of any merit, are hereby dismissed.

July 25, 2007 (A.N. Jindal)
deepak Judge

To be referred to the Reporter : Yes/No.